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May 14, 2010

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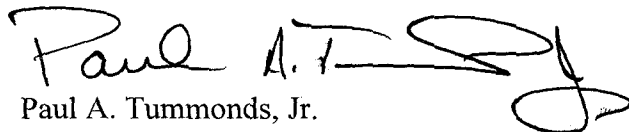
Anthony Hood
Chairperson
District of Columbia Zoning Commission
441 4th Street NW, Suite 210S
Washington, DC 20001

Re: **Consolidated PUD and Zoning Map Amendment Application**
Case No. 09-03 – Proposed Findings of Fact and Conclusions of Law

Dear Chairperson Hood and Members of the Zoning Commission:

Enclosed please find the proposed Findings of Fact and Conclusions of Law prepared by Skyland Holdings, LLC (the “**Applicant**”). The Applicant looks forward to the Commission taking Proposed Action on this application at the May 24, 2010 public hearing.

Sincerely


Paul A. Tummonds, Jr.

PAT/lis

ZONING COMMISSION
District of Columbia

CASE NO.

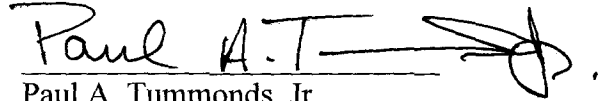
09-03

EXHIBIT NO.

114

Certificate of Service

I certify that on May 14, 2010, a copy of the foregoing document was hand-delivered, sent via E-Mail, or mailed to the addresses listed below.


Paul A. Tummonds, Jr.

Ft. Baker Drive Residents
c/o Martin Sullivan, Esq.
25830 Collins Avenue
Chestertown, MD 21620 (Via E-Mail and Standard Mail)

ANC 7B
c/o Yvonne Moore, Chairperson ANC 7B
3200 S Street, SE
Washington, DC 20020 (Via Hand Delivery)

And

Robert Richards, Vice Chair, ANC 7B
3524 Carpenter Street, SE
Washington, DC 20020 (Via Hand Delivery)

ANC 8B
1809 Savannah Street SE, Suite A
Washington, DC 20020 (Via Standard Mail)

D.C. Office of Planning
c/o Maxine Brown-Roberts
2000 14th Street, NW
4th Floor
Washington, DC 20009 (Via Standard Mail)

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-03
Z.C. Case No. 09-03**

**Consolidated Approval for a Planned Unit Development, Zoning Map
Amendment Plan Amendment of Skyland Holdings, LLC
(Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190,
& 214/196; Square 5632, Lots 1, 3-5, & 802; Square 5633, Lots 800 & 801; Square 5641,
Lots 10-13 & 819; Square 5641-N, Lots 12-31 & 33)**

Pursuant to notice, the Zoning Commission for the District of Columbia (“**Commission**”) held public hearings on December 10, 2009; February 4, 2010; February 17, 2010; and April 21, 2010 to consider an application from Skyland Holdings, LLC (the “**Applicant**”) for consolidated review and approval of a planned unit development (“**PUD**”) and related Zoning Map amendment. The Zoning Commission considered the application pursuant to Chapters 2, 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR Section 3022. For the reasons stated below, the Zoning Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties and Hearing

1. The project site consists of Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190, & 214/196; Square 5632, Lots 1, 3-5, & 802; Square 5633, Lots 800 & 801; Square 5641, Lots 10-13 & 819; Square 5641-N, Lots 12-31 & 33 (“**Subject Property**” or “**Property**”). The Subject Property is known as the Skyland Shopping Center and is generally bounded by Naylor Road and Good Hope Road on the west; Alabama Avenue to the south, a small residential area to the east, a large wooded ravine to the east and northeast, and a residential area to the north. The Subject Property is located within

the boundaries of Advisory Neighborhood Commission (“ANC”) 7B and abuts the boundaries of ANC 8B. The Subject Property consists of the existing shopping center and some vacant lots. (Exhibit 4, p. 1)

2. The Applicant initially filed its application on February 17, 2009. The Zoning Commission set the application down for a public hearing at its May 11, 2009 public meeting. (Exhibits 4-6; May 11 Transcript, p. 49)

3. The Applicant filed a pre-hearing statement on September 21, 2009, and a public hearing was timely scheduled for December 10, 2009. Prior to the public hearing, the Applicant supplemented its application with additional information on November 20, 2009. (Exhibits 19, 20, 25)

4. A public hearing was held on December 10, 2009. Testimony was presented by the Applicant’s project team, including the architect, landscape architect, and transportation consultant. The Applicant also submitted its proposed community amenities, a parking space assessment matrix, and conditions of approval. Pursuant to a written request submitted on November 25, 2009, a group of four homeowners residing at 2933 Ft. Baker Drive, 2929 Ft. Baker Drive, 2937 Ft. Baker Drive, and the 2900 block of Ft. Baker Drive. The Commission granted the group, called the Ft. Baker Drive Party (“**FBDP**”), party status. No other individuals or entities requested, or were granted, party status. At the close of the hearing, the Commission asked the Applicant to reconsider the visual impact of the project on the FBDP properties and to submit a wetlands study for the nearby wooded ravine. The Commission scheduled an additional hearing for February 4, 2010. (Dec. 10 Transcript; Exs. 50-52)

5. On January 21, 2010, the Applicant supplemented its application with additional information as requested by the Commission at the December 10, 2009 hearing. (Exhibit 62).

6. The Commission held an additional public hearing on February 4, 2010. Testimony was presented by the Applicant's architect and tree and wetlands consultant. In addition, the Office of Planning ("OP") and the District Department of Transportation ("DDOT") presented testimony. The Commission scheduled an additional hearing for February 17, 2010.

7. The Commission held an additional public hearing on February 17, 2010. Testimony was presented by a representative of the Deputy Mayor for Planning and Economic Development, ANC 7B, organizations and persons in support, and organizations and persons in opposition. The FBDP presented testimony from a traffic expert and from the representative homeowners. At the conclusion of the hearing, the Commission requested additional information from the Applicant concerning the following: construction techniques/soil stabilization/erosion control measures that will be used; a construction mitigation and management plan; a matter-of-right analysis for the possible development of the existing R-5-B zoned portion of the Property; additional information on the visual impact of the project; additional consultation between the Applicant and ANC 7B; additional consultation between the Applicant and DDOT; additional information as to when residential uses were first proposed for the project; and refinement of the calculation of the public benefits and project amenities provided in the project. The Commission scheduled an additional public hearing for April 21, 2010.

8. On March 29, 2010, the Applicant submitted additional information in response to the Commission's requests at the February 17, 2010 public hearing. (Ex. 103)

9. On March 29, 2010, the FBDP submitted a report assessing the adequacy of the Applicant's traffic report. (Ex. 102)

10. On April 12, 2010, the Applicant submitted a response to the FBDP's traffic report assessment. (Ex. 104)

11. On April 12, 2010, the FBDP submitted a response to the Applicant's March 29 submission. (Ex. 105)

12. The Commission held an additional public hearing on April 21, 2010. At the hearing, the Applicant presented rebuttal testimony. After the close of the hearing, the Commission requested more specific information from the Applicant concerning mitigation measures that will be undertaken during the period of construction activity for on the Property. The Applicant submitted that information on May 5, 2010. (Ex. ____)

13. At its public meeting held on May 24, 2010, the Commission took proposed action by a vote of _____ to approve the application.

14. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to the District of Columbia Home Rule Act. NCPC, by action dated June 3, 2010, found the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

15. The Commission took final action to approve the application in Case No. 09-03 on June 28, 2010 by a vote of _____.

The Subject Property and Surrounding Area

16. The Subject Property consists of two major parcels of land, comprising a total of approximately 18.7 acres. The largest parcel contains the Skyland Shopping Center, which was developed in the 1940s as early automobile oriented shopping center. This center contains many retailers and some vacant retail spaces spread among several buildings. A large surface parking lot for patrons of the shopping center is also on the site. The second smaller parcel,

located to the east of the shopping center and largely in the ravine, is unimproved and contains construction debris and fill. The District of Columbia acquired the Property through eminent domain and maintains ownership of it. The District of Columbia signed the application form, self-certification form, and agent authorization letter to file and process this application. On April 21, 2010, the Applicant submitted a chart listing the ownership of every property included in the Subject Property. (Ex. 19, p. 1; Ex. 108)

17. The Subject Property is located among residential and commercial properties. The residential neighborhood of Hillcrest is located to the east. The Fairlawn residential neighborhood is located north of the Property. The Good Hope Marketplace is located across Alabama Avenue. (Exhibit 19, p.6.)

18. The Hillcrest neighborhood to the east of the Subject Property is low density and includes single-family detached homes. This area is generally zoned R-1-B. (Exhibit 20, p. 17)

19. The Fairlawn neighborhood is located to the north of the Subject Property. The neighborhood generally consists of row-houses and semi-detached residential structures. The area is generally zoned R-5-A. (Exhibit 20, p. 17)

20. The Good Hope Marketplace, located across Alabama Avenue to the south, includes approximately 97,000 square feet of retail space and is anchored by a supermarket. This area is zoned C-3-A. (Ex 20, p. 17)

Existing and Proposed Zoning

21. The parcel containing the existing Skyland Shopping Center is located in the C-3-A Zone District, and the second parcel to the east is located in the R-5-B Zone District. Under the proposal, the second parcel will be rezoned to C-3-A. (Exhibit 20, p.17)

22. The Property is included in commercial areas on the District of Columbia Generalized Land Use Map. The Future Land Use Map indicates that moderate density commercial uses are appropriate for the Subject Property. The Generalized Policy Map designates the Property as a multi-neighborhood center.

Description of the PUD Project

23. The PUD is a mixed-use project in five distinct and self-sufficient development parcels (“**Blocks**”). The project will include a diverse mix of retail and residential uses in a Town Center setting with a “Main Street” shopping experience that will meet the needs of Ward 7 and 8 residents, as well as District residents at large. The project will incorporate a large format retailer and smaller community-serving retail and services, providing approximately 305,000 square feet of retail space. The residential component will include 450-500 residential units in four buildings, and 20 townhouses will be located along the eastern side of the Property. (Exhibit 19, p. 6).

24. The project will include a private street system that will assist in creating the look and feel of a Town Center. A new Main Street will run in the middle of the project from Alabama Avenue north to the large format retailer and then west to Naylor Road. A new Residential Street will run from Main Street east and then south to Alabama Avenue. A lively mix of retail establishments will line the new Main Street, Naylor Road, Good Hope Road, and Alabama Avenue in order to create a pedestrian-friendly and inviting retail experience. A large plaza will be located where Main Street intersects the large format retail building. The project will include a pedestrian-only Paseo extending from Good Hope Road to Main Street. The project will also include a private system of alleys. (Exhibit 19, p. 6-7; Ex. 20)

25. The project will include many features to enhance the streetscape. Planting strips, street trees, sidewalks, and café zones will all contribute to the pleasurable pedestrian

experience. In addition, retailers will be provided the opportunity to create their own distinctive signage and facades at the ground level, rather than having to satisfy a uniform signage requirement. Awnings, canopies, and individual retailer signs will all augment the vibrant streetscape. (Exhibit 19, p. 6-7)

26. The project will contribute transportation infrastructure improvements to the Subject Property and the area around it. A new signalized intersection will be created at Naylor Road and Main Street. The intersection of Alabama Avenue and Good Hope Road will be modified to include a new street entrance into the project. High visibility crosswalks will be added at all adjacent intersections. In addition, the Applicant has engaged DDOT to include Main Street as part of two existing Metrobus routes that already pass by the Property. To accommodate the buses, Main Street will have a designated bus stop and shelter, and the adjacent roadways will also have bus shelters. The Applicant has also committed to providing space for a bus station/ commuter store if DDOT decides to operate such a facility in this location. (Exhibit 19, p. 6-7; Exhibit 20, p. 27)

27. The residential portion of the project will attain a Certified rating in the LEED-for-homes rating system. The large format retail store will be designed to meet the Silver requirements of the LEED NC 2.2 or LEED CS 2.0 rating system. (Ex. 19, p. 3)

28. The five Blocks will be developed as follows:

(a) Block 1. Located at the northwest corner of the Property, Block 1 will front on Naylor Road and Main Street and will consist of one building. A large format retail store, with separate in-line retail spaces provided at the ground floor level will occupy this site. The building will provide approximately 135,000 square feet of space for the large format retail store and approximately 10,000 square feet for other retailers.

In response to concerns from the FBDP and the Commission, the Applicant shifted the location of the building 37 feet toward the west and away from the residential area and property line. The building will be separated from the property line by 72 feet. The building will be 28 feet tall as measured from the mid-point of the Main Street frontage, with a distinctive taller architectural embellishment at the large format retail store's entry. The entry will be two stories, but the remainder of the store will be one story, with parking on the roof. Approximately 630 parking spaces will be provided on the roof and on a half level below grade. The parking areas will be accessed via an internal ramp at the eastern side of the building. Roof lighting will be directed downward, and vegetated screening will be provided on the roof to minimize the impacts of the parking. Loading berths and trash collection areas will be accessed from Naylor Road. (Ex: 19, p. 9-10; Ex. 62, p. 1-2)

(b) Block 2. Consisting of two buildings (Block 2A and Block 2B), Block 2 will be located along the western edge of the Property. Block 2 front on Naylor Road, Good Hope Road, and Alabama Avenue, and the internal Main Street will run along its eastern and northern sides. The pedestrian-only Paseo will separate the two buildings at ground level, but an elevated pedestrian bridge will connect the two buildings. These two buildings will include approximately 92,000 square feet of ground floor retail with approximately 256 residential units above. Residential units will be available in one bedroom, one bedroom plus den, and two bedroom configurations. Block 2A will be three and four stories tall and rise to a measured height of 56 feet. Block 2B will be three stories tall and rise to a measured height of 56 feet. A pool and open/amenity space will be located on the roof of Block 2A adjacent to the Paseo, and it will be available to

residents of both buildings. Loading berths for both buildings will be accessed via a dedicated loading drive just north of the Paseo. A five-level above-grade parking structure will provide 573 spaces (317 for retail/visitors and 256 for residential) for both buildings. The parking structure will be surrounded by Block 2A, and access will be from Main Street. Block 2A will have a single loaded corridor along the interior of the building to buffer the parking garage, and no residential units in this building will have windows facing the parking structure. The façades of Block 2 will incorporate several identities to create the notion of a neighborhood rather than one building. Block 2B is a single building with one identity, but the significantly larger Block 2A will be conceptually composed of several buildings. The Good Hope Road/Naylor Road façade of Block 2A will incorporate variegated massing, while the Main Street façade will be on one plane but broken into different identities. Street frontages of the residential units will include balconies, and large courtyards along Naylor Road, Good Hope Road, and the Paseo will provide additional light and air for the residential units. Retail spaces will face Naylor Road, Good Hope Road, the Paseo, Main Street, and a retail plaza at the northeast corner of Block 2A. This plaza will also serve as the primary lobby for Block 2A. Sidewalks along Main Street will be ten feet wide with eight foot wide planting strips. Main Street will have a dedicated parking space for a car-sharing program. (Ex. 19, p. 10-12; Ex. 62, p. 1)

(c) Block 3. Located at the southeast section of the site, this building will front on Main Street and Alabama Avenue. This building will provide approximately 39,000 square feet of ground-floor retail space with approximately 111 residential units above. The building will be four stories and will have a measured height of 51 feet. The

ground floor retail uses may also include small-scale offices. The residential units above the retail will be available in one bedroom, one bedroom plus den, and two bedroom configurations. This building will wrap around a three story parking garage that will include approximately 245 parking spaces (134 for retail/visitors and 111 for residential). Access to the parking garage will be on the building's east side from the new Residential Street, which runs along east side of the building. Access to the shared retail/residential loading berths will be from the building's north side, just off Main Street. The roof of the parking garage will be green with vegetation and will have a pool, providing residents with an outdoor amenity. The building will include a double-loaded corridor for the residential portion, so some units will have views of the green roof and pool. Units on the lowest residential level facing the green roof will have outdoor patios. The façade of the building will be primarily masonry but will also be articulated with differing identities to enhance the character of the street. The character of the outdoor space will be further enriched by the outdoor sidewalk space at the northwest corner of the building, which will be ideal for outdoor café seating. (Ex. 19, p. 14-15)

(d) Block 4. This building fronts only on Main Street. The building will provide 29,000 square feet of ground floor retail with 81 residential units above. Like the other buildings in the project, residential units will be offered in one bedroom, one bedroom plus den, and two bedroom configurations. The building will have a measured height of approximately 53.3 feet and will be four stories. A three level parking garage providing approximately 192 spaces (111 for retail/visitors and 81 for residential) will be located at the rear (eastern) side of the building. Access to the parking garage and loading berths will be from an alley off Residential Street, with an additional entrance

from the drive next to Block 1. The parking garage will have a vegetated green roof, and a significant landscape buffer will shield the parking garage from the adjacent residential properties. The building façade will consist primarily of masonry with precast elements. The building will be notable for its tower element at the intersection of Main and Residential streets. (Ex. 19, p. 15-16)

(e) Townhouses. The project will include 20 townhouses that will provide a transition from the higher density Blocks 3 and 4 to the lower scale residences to the east of the Property. Access to the townhouses will be via the private residential street, which connects with Alabama Avenue. The townhouses will offer three bedroom units and will be three stories in height, though they will have the appearance of being two stories. The townhouses will be offered in 18 foot and 38 foot wide models and will include front porches and optional decks; some houses will also have front yards. Garage and/or surface parking spaces will be dedicated to each unit, totaling 36 spaces for all of the townhouses. The facades will be in either Tudor or Federal styles and will be composed of colored brick and cast stone. (Ex. 19, p. 16-17)

(f) RCN Building. The Subject Property includes a switching facility for the RCN cable company. The Applicant is required to incorporate this facility into the project as part of the land disposition agreement with the District. The RCN facility will be relocated to a new structure located along the private residential street near its intersection with Alabama Avenue. The appearance of the building will reflect the lower scale townhouse and residential uses to the east of the Subject Property. (Ex. 19, p. 17)

Applicant's Testimony

29. At the public hearing, Gary Rappaport of the Rappaport Companies, testified on behalf of the Applicant. Mr. Rappaport provided a background of the Rappaport Companies

and an overview of the proposed project's history and development team. (Dec. 10 Transcript, p. 17-21)

30. Brad Fennell, Senior Vice President for William C. Smith and Company, testified about the company's background and experience in Wards 7 and 8. Mr. Fennell also discussed the company's experience with other redevelopment projects. Mr. Fennell emphasized the company's involvement in the community and its responsiveness to community concerns. (Dec. 10 Transcript, p. 21-25)

31. Cheryl O'Neill of Torti Gallas testified as the Applicant's expert in architecture. Ms. O'Neill testified about the design and architecture of the proposed project. Ms. O'Neill stated that the project's design will create a vibrant mixed-use environment. Ms. O'Neill also noted the importance of the private street system, especially the new Main and residential Streets, and many plazas within the project in creating open spaces and a pedestrian-friendly environment. She noted that the townhouses will provide a buffer from the higher density elements of the project to the lower density residential area to the east. Ms. O'Neill then described how the architecture of the project contributes to a lively pedestrian experience. She stated that the variety of architectural styles, though compatible with the style and scale of the surrounding neighborhood, will enhance the public realm. Ms. O'Neill also highlighted the fact that the design incorporates a number of environmentally-sustainable features, including green roofs. Ms. O'Neill testified to the many features of the project that will decrease its impacts on the neighboring properties. Such features include a green screen and a masonry/metal screen for the parking area of Block 1. (Dec. 10 Transcript, p. 25-50)

32. Doug Hays, of Michael Vergason Landscape Architects, testified as an expert in landscape architecture on behalf of the Applicant. Mr. Hays testified about the present

vegetation and conditions on the eastern side of the Subject Property. He testified that the understory of the stand was poor and that the stand contained piles of fill and trash. He testified that no noteworthy vegetative community is present that would restrict removal of vegetation subject to the requirements of District of Columbia codes and regulations. He also stated that the Applicant would make every reasonable effort to retain existing trees on the Property. Mr. Hays then testified about the types of trees and other plantings that would be planted along both the internal streets and the public streets adjacent to the project. Mr. Hays also noted the types of furnishings, features, and pavers that would be included in the pedestrian areas of the project. (Dec. 10 Transcript, p. 50-58)

33. Erwin Andres of Gorove / Slade Associates testified as an expert in traffic and parking engineering. Mr. Andres stated that the project would not significantly affect traffic conditions at most studied intersections during peak hours because much of the traffic that travels through those intersections is not related to the project. Mr. Andres stated that many of the project's features, including an existing shopping center and a new mixed-use development, would reduce the impacts of incremental trips generated by the project. Mr. Andres also stated that the potential traffic impacts of the project would be further reduced by the existing and planned public transportation services. Mr. Andres noted that the pedestrian experience in the project will be better and safer than the existing conditions. Mr. Andres testified that the Applicant would provide bicycle parking equivalent to the District Department of Transportation standard of 5% of the required auto parking. Mr. Andres identified six intersections in and near the project that will be improved to reduce congestion and improve pedestrian safety. (Ex. 19; Tab D; Dec. 10 Transcript, p. 58-63)

34. Carrie Thornhill of the Washington East Foundation testified on behalf of the Applicant. Ms. Thornhill testified that the Applicant has engaged in extensive dialogue with the community and that the proposed project has broad community support. She also described the Washington East Foundation's role in development and its role in engaging the community on matters related to the proposed project. She noted that the Applicant has attended many community meetings over the past seven years and that it has actively engaged the community to listen to its concerns about the project. She noted that the Applicant has been a good community partner and that the project has included many modifications in response to community concerns. (Dec. 10 Transcript, p. 63-68)

35. Stephen Green of William C. Smith and Company testified on behalf of the Applicant. Mr. Green testified to the proposed community benefits. Included in these benefits are public space improvements to increase pedestrian safety, environmentally-sustainable design features, neighborhood financial contributions, sponsorships of local community events, job preparedness and training, a small contractor loan fund, a retail build-out subsidy for small and local retailers, home ownership/buying counseling, and space dedicated to a commuter store. Mr. Green stated that it is not viable to build the entire project in one phase. Mr. Green also noted that the proposed number of parking spaces is essential to attract a large format retailer, but the Applicant is willing to assess the number of required spaces in later phases of development. The Applicant is committed to the fewest number of spaces for a feasible project and submitted an assessment matrix for determining the number of parking spaces that will be constructed in later phases of the development of the project. Finally, Mr. Green testified that that the Applicant is concerned about the possible impact of construction activity on the nearby

properties. He stated that the Applicant is committed to a series of construction mitigation measures. (Dec. 10 Transcript, p. 68-78; Ex. 50 & 51)

Density Proposed and Flexibility Requested

36. The total gross floor area included in the proposed PUD project is approximately 1.3 million square feet for a total Floor Area Ratio (“FAR”) of approximately 1.61. The commercial FAR is approximately 0.95. Building heights range from 53 to 60 feet. The proposed FAR and building heights are significantly less than those permitted as a matter-of-right in the C-3-A zone (4.0 (2.5 commercial) FAR and 65 feet, respectively) and significantly less than the PUD guidelines (4.5 (3.0 commercial) FAR and 90 feet, respectively). (Exhibit 19, p. 17; Ex. 20, p. 18-19)

37. The Applicant requested permission to construct more than one building on a single record lot pursuant to Section 2516. The Applicant requested flexibility from the following requirements of the Zoning Regulations: (i) the rear yard requirements for 11 of the townhouse lots and for Block 3; (ii) the side yard requirements for Blocks 2 & 4, and the townhouse lot adjacent to Block 4 and the private alley; and (iii) the lot occupancy requirement for one of the townhouse lots. The Zoning Commission has the authority to grant this flexibility pursuant to Sections 2405.4, 2405.5, and 2405.7 of the Zoning Regulations. (Exhibit 19, p. 18)

38. The Applicant requested flexibility from the strict application of the roof structure requirements of the Zoning Regulations in order to allow roof structures on the buildings in Blocks 1-4 that do not satisfy the requirements that roof structures be enclosed in a single structure of equal height and set back from all exterior walls at a ratio of 1:1. The Zoning Commission has the authority to grant this flexibility pursuant to Section 2405.7. (Exhibit 19, p 18-19)

39. The Applicant requested flexibility from the strict application of closed court width requirements of the Zoning Regulations for Blocks 2A and 2B. The proposed design and layout of these buildings will provide sufficient light and air to the residential units, and this flexibility will not adversely affect residents of these buildings or nearby property owners. The Zoning Commission has the authority to grant this flexibility pursuant to Section 2405.5. (Ex. 19, p. 19)

40. The Applicant requested flexibility from the loading requirements of the Zoning Regulations for Blocks 3 and 4. The project will provide shared loading for the retail and residential facilities in these Blocks. These loading facilities will adequately serve the needs of the buildings. The Zoning Commission has the authority to grant this flexibility pursuant to Section 2405.5. (Ex. 19, p. 19)

41. The PUD will be constructed in phases. The Applicant expects that the first stage will consist of Blocks 1 and 4 and the relocation of the RCN building, along with the construction of Main Street. Grading of the Residential Street will also be completed in the first phase. Since the additional phases will be determined by market demand, the Applicant has flexibility to develop the additional Blocks as is deems appropriate. The Applicant requested that the Order be valid for three years and requested 10 years to develop the project (Ex. 19, p. 20).

42. The Applicant provided significant testimony on its need to construct all 1,698 parking spaces for the project based on the requirements of potential large format retailers. The Applicant proposed an assessment matrix to review demand for parking spaces in later phases of the project. The Commission grants the Applicant flexibility to construct all

proposed 1,698 parking spaces or less if later phases reveal that not all of these spaces are necessary. (Ex. 19, p. 20; Ex. 51)

43. The Applicant, in its written submissions and testimony before the Commission, noted that the following benefits and amenities will be created as a result of the project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403.

(a) Housing and Affordable Housing: Pursuant to Section 2403.9(f) of the Zoning Regulations, the PUD guidelines state that the production of housing and affordable housing is a public benefit that the PUD process is designed to encourage. This project will create approximately 450-500 residential units, with 20% of the units (90-100) reserved for households earning up to 80% of AMI and an additional 10% of the units (45-50) reserved for households earning up to 120% of AMI. The affordable units will be located in all of the multi-family buildings and will be distributed throughout these buildings (except for the upper stories). The amount of affordable housing provided is more than double what is required under the Inclusionary Zoning Regulations. (Ex. 19, p. 23)

(b) Urban Design, Architecture, Landscaping, or Creation of Open Spaces: Section 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. The project exhibits all of the characteristics of exemplary urban design and architecture. The project will create the first pedestrian-oriented mixed-use project for residents of Wards 7 and 8. The architecture of the buildings is thoughtful and timeless and includes only high quality materials, and is consistent with the surrounding neighborhood. The facades and buildings along Main Street and the frontages along Alabama Avenue, Good Hope Road, and Naylor Road will provide

significant opportunities for sidewalk cafes and varied retail uses to animate the neighborhood. Defined public spaces, such as the Paseo, Retail Plaza, and Main Street Plaza will provide ample gathering spaces. In addition, the project will incorporate low-impact development and landscaped buffers for the low scale residential uses along the eastern boundary of the site. (Exhibit 19, p. 24)

(c) Site Planning, and Efficient and Economical Land Uses: Pursuant to Section 2403.9(b) of the Zoning Regulations, “site planning, and efficient and economical land utilization” are public benefits and project amenities to be evaluated by the Zoning Commission. The creation of this significant mixed-use project on the Subject Property, with housing and varied retail and service uses, is an example of appropriate site planning and efficient and economical land use as a project amenity. Currently, the Property feels very suburban and uninviting due to the large expanse of surface parking lots located in front of the existing buildings. The Applicant will utilize a soil improvement method to make the fill and debris portion of the site suitable for development. In addition, the introduction of the internal streets will create more distinct and identifiable development parcels on a human scale. The creation of a mixed-use environment allows people to live and shop in the same location, while being able to use enhanced Metrobus service, also demonstrates efficient and economical use of land. (Ex. 19, p. 25)

(d) Effective and Safe Vehicular and Pedestrian Access: The Zoning Regulations, pursuant to Section 2403.9(c), state that “effective and safe vehicular and pedestrian access” can be considered public benefits and project amenities. The Subject Property currently has eleven site access points which creates far too many

vehicular/pedestrian conflicts. Vehicular access to the site will be reduced to six access points, thereby reducing the potential for vehicular/pedestrian conflicts. In addition, the Applicant will fund the following transportation infrastructure improvements to remedy existing and potential traffic problems in the area:

- installation of a new signalized intersection at Naylor Road and the project's Main Street;
- pavement restriping on Naylor Road to increase capacity;
- improvements to the existing intersection at Good Hope Road and Naylor Road/25th Street;
- modification of the signalized intersection at Alabama Avenue/Good Hope Road and Main Street;
- installation of a new signalized intersection at Alabama Avenue and the New Residential Street; and
- the creation of high visibility pedestrian crosswalks at intersections adjacent to the Subject Property and throughout the project's internal street system.

The Applicant submitted a Transportation Impact Study and a Transportation Management Plan ("TMP"). The TMP includes the following components:

- Dedicated parking spaces for car-sharing vehicles;
- The enhancement of Metrobus service in and around the site which will help encourage residents of the project and the surrounding areas to utilize public transportation;
- The Applicant will request that all retailers and employers provide all employees with a Metrocheck or SmartTrip Card with a value of \$20.00 to encourage the use of public transit; and
- The Applicant will establish the position of a Transportation Services Coordinator in the property management office who will be responsible for administering and advancing TMP strategies and also monitoring loading and parking practices in the project.

The Traffic Impact Study concluded that with the implementation of the transportation infrastructure improvements and TMP programs noted above, "the proposed development would not have any appreciable objectionable impacts on the surrounding roadway network and adjacent communities, from the perspectives of traffic and parking." (Ex. 19, p. 26-26)

(e) Uses of Special Value: According to Section 2403.9(i), “uses of special value to the neighborhood or the District of Columbia as a whole” are deemed to be public benefits and project amenities. The Applicant has agreed to provide the following project amenities as a result of this project:

- Transportation Infrastructure Improvements - the transportation infrastructure improvements noted above will cost the Applicant approximately \$1 million - \$1.2 million dollars.
- Community Benefits and Amenities - The Applicant has committed to a community amenities package with a value totaling \$5,249,325. (Ex. 19, p. 26; Ex. 103)

(f) Revenue for the District: Section 2403.9(i) states that “uses of special value to the neighborhood or the District of Columbia as a whole” are deemed to be public benefits and project amenities. The creation of approximately 450-500 new households and approximately 305,000 square feet of retail space will result in the generation of significant additional tax revenues for the District. (Ex. 19, p. 27)

(g) Employment and Training Opportunities: According to Section 2403.9(e), “employment and training opportunities” are representative public benefits and project amenities. The proposed retail and service-oriented uses will result in the creation of a significant number of new jobs. The Applicant will enter into an agreement to participate in the Department of Employment Services First Source Employment Program to promote and encourage the hiring of District of Columbia residents. The Applicant will also enter into a Certified Business Enterprise Utilization Agreement with the Department of Small and Local Business Development to utilize Certified Business Enterprises in the design, development, and construction of the Project. (Ex. 19, p.27)

(h) Comprehensive Plan: According to Section 2403.9(j), public benefits and project amenities include “other ways in which the proposed planned unit development

substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.” The proposed PUD is consistent with and furthers many elements and goals of the Comprehensive Plan. (Ex. 19, p. 27)

(i) Public Benefits of the Project: Sections 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. This PUD project will include many, if not all, of the attributes of PUD projects that have been recently approved by the Zoning Commission, including:

- Exemplary/superior architecture;
- Affordable housing;
- Transit-oriented development;
- Destination retail and service establishments;
- Traffic calming measures and transportation infrastructure improvements;
- Significant job creation;
- Public space improvements (\$169,250);
- Pocket park improvements (\$50,000);
- Low impact design features;
- Financial support for local schools to make capital improvements (\$200,000);
- Sponsorship of local community events and programs (\$35,000);
- Job preparedness training (\$75,000);
- Contractor loan fund (\$300,000);
- Homeownership/Home buying counseling (\$75,000);
- Enhancements to Anacostia and Francis Gregory Libraries (\$50,000);
- Retailer build-out subsidy (\$500,000) (Ex. 19, p. 28, Tab H)

Comprehensive Plan

44. The proposed PUD is consistent with and fosters numerous policies and action items enumerated in the Comprehensive Plan. The Subject Property is located in the Far Northeast and Southeast Planning Area delineated in the Comprehensive Plan. The Comprehensive Plan's Far Northeast and Southeast Elements includes the following pertinent provisions:

Reinvestment in Skyland is an important part of the District's efforts to provide better shopping options for neighborhoods east of the Anacostia River, reduce the loss of retail dollars to the suburbs, and make the East of the River area more attractive to existing and future retailers. To be most effective, planned improvements should be part of a broader strategy to enhance the Alabama/Good Hope area as a focal point for surrounding neighborhoods such as Hillcrest and Fairlawn, and to upgrade the Naylor Road corridor as a gateway to Far Northeast and Southeast and Historic Anacostia.

Policy FNS-2.7.1: Skyland Revitalization

Revitalize Skyland Shopping Center as an essential, dynamic community-scale retail center. Together with the Good Hope Marketplace, these two centers should function as the primary business district for adjacent neighborhoods, providing a diverse array of quality goods and services for area residents.

Action FNS-2.7.B: Fort Baker Drive Buffering

Work with property owners to develop and maintain a suitable visual, sound and security buffer between Skyland Shopping Center and the adjacent residential areas along Fort Baker Drive.

Policy FNS-1.1.2: Development of New Housing

Encourage new housing for area residents on vacant lots and around Metro Stations within the community, and on underutilized commercial sites along the area's major avenues. Strongly encourage the rehabilitation and renovation of existing housing in Far Northeast and Southeast, taking steps to ensure that the housing remains affordable for current and future residents.

Policy FNS-1.1.3: Directing Growth

Concentrate employment growth in Far Northeast and Southeast, including office and retail development, around the Deanwood, Minnesota Avenue and Benning Road Metrorail station areas, at the Skyland Shopping Center, and . . .

Provide improved pedestrian, bus, and automobile access to these areas, and improve their visual and urban design qualities. These areas should be safe, inviting, pedestrian-oriented places.

Policy FNS-1.1.4: Retail Development

Support the revitalization of the neighborhood commercial areas listed in Policy FNS-1.1.3 with new businesses and activities that provide needed retail services to the adjacent neighborhoods and that are compatible with surrounding land uses.

Policy FNS-1.1.9: Congestion Management

Re-examine traffic control and management programs along major far Northeast and Southeast arterials streets, particularly along Pennsylvania and Minnesota Avenues, East Capitol Street, Benning Road, Branch Avenue, and Naylor Road, and develop measures to improve pedestrian safety and mitigate the effects of increased local and regional traffic on residential streets.

Policy FNS-1.1.10: Transit Improvements

Improve bus service to the Metrorail stations from neighborhoods throughout Far Northeast and Southeast, particularly in the southern part of the Planning Area.

The proposed project furthers all of the Policies noted above. The project will create a vibrant and exciting pedestrian oriented mixed-use project on the site of the existing Skyland Shopping Center that will serve residents of the adjacent neighborhoods, as well as residents of Wards 7 and 8. The proposed landscaping of the project and the treatment of the retaining wall along the northeast corner of the Subject Property will create a suitable buffer between the project and the residential uses east of the site. The project proposes a robust TMP that will mitigate any adverse transportation impacts that may result from this project. The project also proposes significant improvements to the Metrobus service in the area surrounding the Subject Property.

45. The Comprehensive Plan identifies the Property as a Multi-Neighborhood Center. The Comprehensive Plan's Generalized Policy Map defines a Multi-Neighborhood Center as follows:

Multi-neighborhood centers contain some of the same activities as neighborhood centers but in greater depth and variety. Their service area is typically one to three miles. These centers are generally found at major intersections and along key transit routes. These centers might include supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers also may include office space for small businesses, although their primary function remains retail trade. Mixed-use infill development at these centers should be encouraged to provide new retail and service uses, and additional housing and job opportunities. Transit improvements to these centers are also desirable.

The proposed Project is entirely consistent with this land use designation. The Project will include a variety of retail and service-oriented uses. The inclusion of a large format retail store establishes the site as a true multi-neighborhood center. The introduction of the residential units on the Subject Property is also entirely consistent with this land use designation, in addition, the Project

will result in significant transit improvements that will benefit the surrounding neighborhoods and communities.

46. The Comprehensive Plan's Land Use Element addresses Neighborhood Commercial Districts and Centers and notes:

LU-2.4 Neighborhood Commercial Districts and Centers

Many District neighborhoods, particularly those on the east side of the City, lack well-defined centers or have centers that struggle with vacancies and a limited range of neighborhood-serving businesses. Greater efforts must be made to attract new retail uses to these areas by improving business conditions, upgrading storefronts and the street environment, and improving parking and pedestrian safety and comfort. The location of new public facilities in such locations, and the development of mixed use projects that include upper story housing can encourage their revival.

Policy LU-2.4.1: Promotion of Commercial Centers

Promote the vitality of the District's commercial centers and provide for the continued growth of commercial land uses to meet the needs of District residents, expand employment opportunities for District residents, and sustain the city's role as the center of the metropolitan area. Commercial centers should be inviting and attractive places, and should support social interaction and ease of access for nearby residents.

The proposed project is the type of development that is sought in the above-mentioned Land Use policies. The proposed retail and service-oriented uses will enliven the surrounding area and provide opportunities for District residents to purchase goods and services in the District. The project will also create significant job opportunities for District residents. The high quality of design and finishes in both the retail and housing components of the project will create an inviting and attractive experience that will help ensure the project's long term success.

47. The Comprehensive Plan's Housing Element includes the following policies that are supported by this project:

Policy H-1.1.4: Mixed Use Development

Promote mixed-use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations.

The project's provision of approximately 450-500 residential units, including 20% of the units reserved for households earning up to 80% of AMI and an additional 10% of the units reserved for households earning up to 120% of AMI, in a neighborhood commercial center is consistent with this Policy.

48. The Comprehensive Plan's Transportation Element includes the following policies that are supported by this project.

Policy T-3.1.1: Transportation Demand Management (TDM) Programs

Provide, support, and promote programs and strategies aimed at reducing the number of car trips and miles driven (for work and non-work purposes) to increase the efficiency of the transportation system.

Policy T-3.1.3: Car-Sharing

Encourage the expansion of car-sharing services as an alternative to private vehicle ownership.

The Applicant's TMP is consistent with these policies of the Transportation Element of the Comprehensive Plan.

Government Agency Reports and District Government

49. By report dated November 30, 2009, the Office of Planning ("OP") recommended that the proposed PUD and related Zoning Map amendment should be approved. In its report, OP stated, "The proposal is not inconsistent with the 2006 Comprehensive Plan, Future Land Use Map that recommends moderate density commercial for the majority of the property and Generalized Policy Map recommendation for a multi-neighborhood center for the property. The development is also consistent with many of the policies for the Far Northeast and Northwest [sic.] Area." (Exhibit 31, p. 1)

50. In testimony at the public hearing and as noted in its November 30, 2009 report, OP expressed concerns about the number of parking spaces in the project. OP stated its belief that the number of spaces is excessive and that they have met with the Applicant to discuss the possibility of reducing the number of spaces in the project. (Ex. 31, p. 6-7)

51. OP recommended that the Commission approve the number of parking spaces associated with the first phase of development (Blocks 1 and 4). OP also recommended that the Applicant be required to return to the Commission for later phases of development to determine whether the proposed number of parking spaces is necessary. This would be based on a collaborative analysis between OP and the Applicant. (February 4 Transcript, p. 14.)

52. OP also recommended that the Applicant provide space in the project for a commuter store. The store would provide information on transit services, as well as offering SmartTrip cards, student/senior passes, bus schedules, SmartBike information, and car-sharing information. OP also requested that the Applicant provide security and cleaning services for the space. OP noted that the Applicant agreed to this and noted that staffing and operation of the commuter store would be the District's responsibility. (February 4 Transcript, p. 69)

53. OP stated that the Applicant requested "only a minimum amount of flexibility which does not affect the FAR, density, or height allowed by-right in the C-3-A district." At the same time, OP noted that the Applicant will provide a suitable number of amenities based on the flexibility requested. (Exhibit 31, p. 8; February 4 Transcript, p. 71)

54. OP stated in its report and at the hearing that the Fire and Emergency Medical Services Department ("FEMSD") submitted comments that noted concerns about emergency access to all of the buildings in the project and truck turning radii. FEMSD also noted

concerns about the layout of fire hydrants. Both concerns were based on the project's compliance with the D.C. Fire Code. (Exhibit 31, p. 16; February 4 Transcript, p. 69-70)

55. By its report dated December 7, 2009, DDOT recommended conditional support of the PUD and related Zoning Map amendment. DDOT agreed with the Applicant that the Project would not have significant transportation impacts. It stated that the Applicant is following DDOT's policy for a Transportation Demand Management program. (Exhibit 36, p. 2)

56. In its testimony at the public hearing and in its report, DDOT noted its concerns with pedestrian safety around the project and its desire for additional pedestrian safety measures. DDOT stated that it is concerned about the increased number of pedestrians crossing the street because of this development and that many of the intersections are unsafe for pedestrians. It also noted that curb radii create pedestrian safety hazards. It identified certain locations near the Property that should be improved for safety. DDOT noted that the Applicant agreed to install three traffic signals to improve pedestrian safety. (Ex. 36, p. 3-4; Feb. 4 Transcript, p. 135)

57. In its testimony at the public hearing and in its report, DDOT noted its concerns with the proposed curb cuts. DDOT stated that two of the proposed curb cuts are problematic for DDOT's pedestrian safety standards. (Ex. 36, p. 4; Feb. 4 Transcript, p. 135).

58. In its report, DDOT noted its concern with the excessive number of parking spaces. DDOT also expressed concern with the unloading of freight to the retail fronting on Main Street. DDOT also noted its desire for a commuter store in space provide by the Applicant. (Ex. 36, p. 3-5)

59. By a report dated January 21, 2010, the Urban Forestry Administration (“UFA”) recommended approval of the PUD and related map amendment with conditions. UFA recommended that the Applicant undertake several mitigation techniques to address the loss of some of the urban forest and to minimize erosion and stormwater runoff in the ravine to the east of the Property. (Ex. 63)

60. The District Department of the Environment (“DDOE”) submitted a report on the proposed PUD and related Zoning Map amendment. DDOE recommended that the Commission require the proposed environmental design elements as proposed by the Applicant. The report also noted that further detailed review regarding green building and stormwater management would be conducted at the building permit stage. (Ex. 31, p. 16)

ANC 7B Report

61. ANC 7B submitted a letter in support of the application on December 3, 2009. The letter stated that, on November 19, 2009, the ANC unanimously voted to approve a motion in support of the PUD and related Zoning Map amendment application, provided that the Applicant first meet four conditions, which includes a list of 21 proposed community benefits. (Exhibit 33)

62. At the public hearing, ANC 7B Commissioner Robert Richards and Kenneth Davis represented ANC 7B and testified on its behalf. Mr. Davis testified to the ANC’s conditions of support for the Applicant’s proposed project. (Feb. 17 Transcript, p. 25-32)

63. The Zoning Commission noted that the list of benefits requested by the ANC differs from that proposed by the Applicant. The Commission asked the ANC to revisit its requested 21-item community benefits package and to engage the Applicant in additional discussions about the benefits package. (February 17 Transcript, p. 33-34)

64. In response to the Commission's requests, on March 29, 2010, the ANC submitted a revised list of community benefits. The ANC stated that it had engaged in further discussion with the Applicant. The ANC removed four items from its previous list and added an item for a total of 18 requested benefits. However, the list did not match that proposed by the Applicant. (Ex. 100)

Parties in Support

65. There were no parties in support of the application.

Persons in Support

66. Eric Jenkins, Development Manager in the Office of the Deputy Mayor for Planning and Economic Development, testified on behalf of the Deputy Mayor in support of the Applicant's proposed PUD and related Zoning Map amendment. Mr. Jenkins noted how the project will generate over 1740 construction jobs and 690 permanent jobs. In addition, Mr. Jenkins stated that the project is estimated to generate more than \$303 million in tax revenue over a 20 year period. He emphasized the positive social and economic impact of the project on the residents of Ward 7 and the considerable public benefits package offered by the Applicant. (Feb. 17 Transcript, p. 7-12)

67. Karen Lee Williams, of the Hillcrest Community Association ("HCCA"), testified in support of the Applicant's proposed PUD and related Zoning Map amendment. Ms. Williams stated that the HCCA supports the application and that the Applicant team has been open, forthright, and accessible. She also noted that the Applicant has upheld its commitments and has been responsive to community concerns. She concluded by stating that the HCCA board of directors passed a resolution in support of the proposed PUD and related map amendment. (Feb. 17 Transcript, p. 48-54)

68. Villareal Johnson of the Washington East Foundation and Eugene Dewitt Kinlow, resident of 3952 2nd Street SW, testified in support of the Applicant's proposed PUD and related Zoning Map amendment. They noted how the proposed mixed-use project will enhance the neighborhood and will bring a much-needed and important mix of retail and services to Wards 7 and 8. They also noted how the proposed project will improve the quality of life for residents nearby. (Feb. 17 Transcript, p. 56-62)

69. Julius Ware of the Ward 7 Business and Professional Association testified in support of the proposed PUD and related Zoning Map amendment. He noted that the project will create jobs and opportunities for businesses and residents in Ward 7. He also expressed his confidence in the Applicant's proposed community benefits package and the Applicant's ability to work with the community on the community benefits package. (Feb. 17 Transcript, p. 62-65)

70. Ten people submitted letters and/or written testimony in support of the proposed PUD and related Zoning Map amendment. Among others, Councilmembers Marion Barry and Kwame Brown, submitted letters in support of the project. (Ex. 27, 32, 42, 43, 48, 61, 66, 69, 91, 92)

Party Status Requests

71. The HCCA filed a request for party status on November 24, 2009. They subsequently withdrew their request for party status on November 30, 2009. (Exhibits 28 and 35)

72. On November 25, 2009, a group of four residents living on nearby Ft. Baker Drive requested party status. The Commission granted party status to the Ft. Baker Drive Party ("**FBDP**"). (Ex. 29)

Parties in Opposition

73. At the February 17, 2010 public hearing, the FBDP presented testimony in opposition to the proposed PUD and related Zoning Map amendment. The FBDP noted three major problems with the PUD application: traffic related impacts; inconsistency with the Comprehensive Plan; and the insufficiency of the project's benefits and amenities package. The FBDP's traffic and parking consultant, Joe Mehra (admitted as an expert), testified that, in his opinion, the Applicant's traffic study had five shortcomings. On March 29, 2010 the FBDP submitted a written report from Mr. Mehra assessing the Applicant's traffic study. (Feb. 17 Transcript, p. 128- 131; Ex. 102)

74. Ronald Cole, owner of 2933 Ft. Baker Drive; Gary Puckerin, owner of 2929 Ft. Baker Drive; Karen Siebert, owner of 2937 Ft. Baker Drive; and Cynthia Brock-Smith, resident of the 2900 block of Ft. Baker Drive, (all members of the FBDP) testified in opposition to the proposed PUD and related Zoning Map amendment. These individuals stated concerns with the rezoning of the R-5-A zoned area on the eastern edge of the Subject Property, with the close proximity of Blocks 1 and 4, with the height and scale of Block 1, with the loss of forest views and privacy in the ravine between their properties and the project, and with the large scale of the project. They also testified that they believe that the project will adversely affect traffic, light and air, security, environmental quality, and property values. (Feb. 17 Transcript, p. 133-143)

75. The FBDP individuals testifying in opposition to the application expressed concerns about the project being incompatible with the neighborhood. They objected to the access to the parking in Block 1 and the related consequences of frequent traffic in the Block 1 parking garage. The testifying individuals also noted their concerns that the loss of the R-5-A zoned area will allow for high density development close to their homes that is incompatible

with their low density neighborhood; they expressed a strong desire to maintain a natural buffer between their properties and the project. The FBDP testified in objection to the residential component of the project and expressed a desire for only a commercial project. (Feb. 17 Transcript, p. 143-160)

76. FBDP individuals expressed concerns with possible soil erosion in the ravine between the Subject Property and the Ft. Baker Drive properties. The FBDP noted that, in their opinion, the soil quality in the ravine is poor and unstable because it was once a dumping site. The FBDP also expressed concern with the possibly harmful effects of construction on their properties because of the unstable ground in the ravine and the possibility that construction will exacerbate problems they already have with their homes. (Feb. 17 Transcript, p. 143-160)

77. The FBDP testified that they believe a natural spring runs in the ravine. These individuals stated their concerns that the steep slope of the ravine adjacent to Block 1 will be unable to support such a large development and will damage their homes. The FBDP requested the Commission to require an environmental assessment and impact study by the Applicant to verify that FBDP's homes will not be damaged. (Feb. 17 Transcript, p. 160-166)

Persons in Opposition

78. Ronald Mitchell, Mary Rose Green, ANC 7B Commissioner Robin Hammond-Marlin, Kimberly Jones, and Yvonne Bing all testified in opposition to the proposed PUD and related Zoning Map amendment. These people testified to their concerns about density, traffic, parking, pedestrian safety, noise, environmental impacts, inadequate community benefits, ownership of land included in the Subject Property, and a construction management plan. (Feb. 17 Transcript, p. 82-95)

79. Approximately 26 people or organizations submitted letters in opposition to the proposed PUD and related Zoning Map amendment. (Ex. 34, 37-41, 44, 47, 57-60, 64, 65, 67, 68, 70-74, 83, 84, 95, 97, 98)

80. Elaine Mittleman, attorney for several previous owners of the Subject Property, submitted letters into the record noting concerns about the status of the title to the properties included in the Subject Property and whether the District of Columbia held proper title to all of the properties that make up the Subject Property. Ms. Mittlemen also raised questions regarding the satisfaction of the PUD filing requirements, requested information about the contractual relationship between the Applicant and the District of Columbia Government, requested information about the identity of the potential anchor tenant, raised concerns about the project's impact on the existing tenants, and raised concerns about the previous legal representation of some of the previous property owners. (Ex.s 14 and 83).

Applicant's Responses

81. In response to questions from the Commission, the Applicant submitted additional information and modifications to the project on January 21, 2010. The Applicant moved the Block 1 building away from the property line adjacent to Ft. Baker Drive an additional 37 feet, for a total distance of 72 feet. This change removed approximately 10,000 square feet of retail space along Naylor Road. The change also eliminated the need for a retaining wall system along the ravine and maintains a larger portion of the slope into the ravine. The Applicant also added more landscaping buffer to diminish the appearance of Block 1 from Ft. Baker Drive. The Applicant relocated the ramp to the roof parking area in Block 1 to be completely within the building, thereby minimizing noise from cars. (Ex. 62)

82. In response to UFA's concerns and requests from the Commission, on February 4, 2010, the Applicant submitted a report and provided testimony from Lynn Straughn, an

expert in aboriculture and wetland delineation. Ms. Straughn testified about the vegetation in the ravine to the east of the Subject Property. She testified that the site contains no noteworthy vegetative community and consists of many invasive species; she stated that nothing would restrict the removal of vegetation on the site under the requirements of the D.C. Code. She testified that the area includes only 17 Special Trees (as defined in the Urban Forest Preservation Act of 2002), and one of those will be preserved. In addition, many of the trees are in poor condition, but many will be replaced. The Applicant submitted a chart to the Commission which explains the proposed tree removal and replacement on the Property. This chart showed that the total caliper amount of trees to be planted on the Property is greater than the total caliper amount of the Special Trees proposed to be removed. Ms. Straughn explained that the ravine was once cleared of vegetation. Ms. Straughn also explained that the area in question is not wetlands or waters of the U.S. because it does not meet the criteria set forth by the Army Corps of Engineers. (Ex. 76; Ex. 77; Feb. 4 Transcript, p. 20-24; Ex. 62)

83. The Applicant addressed FEMSD's concerns in its January 11, 2010 filing by submitting a copy of the letter it sent to FEMSD stating that the Applicant will take all necessary measures to ensure the project's compliance with the D.C. Fire Code. FEMSD submitted a follow-up report (via OP) stating that their issues had been resolved. (Ex. 62; Ex. 101)

84. In response to the assessment submitted by the FBDP concerning the Applicant's traffic study, the Applicant submitted additional information on its traffic study. The Applicant's traffic engineering expert noted that the data and methods in his reports were appropriate and provided an accurate assessment of the project's impact on traffic. (Ex. 104)

85. In response to questions and requests from the Commission at the February 17, 2010 public hearing, the Applicant submitted additional information on March 29, 2010.

- The Applicant stated that it will use construction techniques that will have no or few impacts on neighboring properties. Such techniques will include dynamic compaction and/or stabilizing the existing soil. In lieu of dynamic compaction, the Applicant may use soil surcharging, compaction grouting, mat foundations, and drilled micro piles. The Applicant noted that all of the proposed construction techniques could be utilized on the Property in a manner that will effectively mitigate construction impacts on the FBBDP properties.
- The Applicant stated that it will provide on-site seismic/vibration monitoring for the Ft. Baker Drive properties during construction.
- The Applicant noted that the proposed construction measures will also reduce stormwater flow toward Ft. Baker Drive through an on-site stormwater management system.
- The Applicant reiterated that the proposed Tree Preservation Area will reduce any further erosion and a newly planted vegetation area will further stabilize the slope area of the ravine.
- The Applicant noted that it had presented the FBBDP with a draft Construction Mitigation Agreement in December 2009 but had not received a written response to that Agreement.
- The Applicant prepared a matter-of-right analysis for the existing R-5-B area of the Property. This analysis demonstrated that a matter-of-right multi-family residential building in this area could be 30.5 feet taller than the proposed Block

1 and 22.5 feet taller than the proposed Block 4, and would have a greater impact on the neighboring properties. The Applicant also provided shadow studies which depicted the impact that the proposed project, and a possible matter-of-right residential building, would have on the FBDP properties.

- The Applicant also provided information on a “balloon test” that it conducted on March 16, 2010 to depict the visual impact of the proposed project. The test revealed that the visual impact would be negligible.
- The Applicant stated that it has engaged ANC 7B in a dialogue about the ANC’s conditions of support, and they have come to agreement on many of these. The Applicant reassessed its public benefits and amenities and submitted a revised chart describing these benefits and amenities. The revised value of these benefits and amenities is \$5,249,325.
- After meeting with DDOT, the Applicant agreed to modify the ingress/egress point for Block 2.
- The Applicant stated that the proposed residential use for the project was first presented to the community by representatives of the National Capital Revitalization Corporation on August 19, 2006. (Ex. 103)

86. In response to concerns about ownership of the lots comprising the Subject Property, the Applicant submitted a chart illustrating the ownership of all of the lots. The District has title to all of the properties that are included in this project and the District of Columbia Government submitted the appropriate agent authorization letter into the record. All of the properties included in the PUD project are contiguous and the required notice was provided to all current lessees on the property. These lessees were given the opportunity to

participate in this process and make their concerns known. The other issues raised in the letter of Ms. Mittleman concerning a request for more information of the agreement between the District and Applicant, the identity of a possible anchor tenant, and the legal representation of previous property owners are outside the scope and review authority of the Zoning Commission. (Ex. 109)

87. In response to concerns from the Zoning Commission at the April 21, 2010 public hearing, on May 5, 2010, the Applicant submitted a list of the construction mitigation measures that it will follow during construction of the project. Such measures include monitoring of construction activity impacts on Ft. Baker Drive properties; a commitment to repair, at its own expense, any damage that may occur during construction; site management, including fencing, erosion control, frequent trash removal, and direction of construction traffic; and designation of an on-site construction representative to answer questions and respond to concerns. (Ex. ____)

Satisfaction of the PUD and Zoning Map Amendment Approval Standards

88. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” 11 DCMR § 2403.8. The Applicant’s March 29, 2010 submission noted that the total value of the project and community amenities provided in this project is \$5,249,325. Given the significant amount and quality of the project amenities and public benefits included in this PUD and related Zoning Map amendment application, the Commission finds that the development incentives to be granted for the project and the related rezoning are appropriate. The Commission also finds that the requested areas of flexibility from the requirements are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the

superior benefits and amenities offered by this project. The Commission notes that the amount of development proposed in this PUD project (approximately 350,000 square feet) is significantly less than the amount of development that could occur on the Property as a matter-of-right (approximately 1.6 million – 2.1 million square feet).

89. The Commission finds that the project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to affordable housing, urban design, landscaping and open space, site planning, job training and employment opportunities, transportation measures, environmental benefits, and uses of special value to the neighborhood and District as a whole.

90. The Commission credits the written submissions and testimony of the Applicant and OP that the proposed PUD and rezoning to the C-3-A Zone District is appropriate and that the proffered amenities and benefits are acceptable. The Commission also credits the testimony of the Applicant and OP that the proposed PUD project and rezoning of the Property are not inconsistent with the Comprehensive Plan. The Commission finds the written statements, reports and testimony of the Applicant and OP persuasive that the creation of a town center (residential and commercial mixed-use) project is entirely consistent with the designation of the majority of the Property as a Multi-Neighborhood Center. In addition, the Commission notes the changes the Applicant made to Block 1 of the project, and how those changes address Action Item FNS 2.7.B of Chapter 17 of the Comprehensive Plan which requires that the Applicant work with property owners to develop and maintain a suitable visual, sound and security buffer between the Skyland Shopping Center and the adjacent residential areas along Ft. Baker Drive. In response to issues raised by the property owners on Ft. Baker Drive, the building on Block 1 was pulled back from the property line an additional

37 feet (for a total distance of 72 feet), a 58,000 square foot Tree Preservation Area was created, and the ramp to the roof parking was internalized into the building. As shown in the materials submitted into the record on March 29, 2010, a matter-of-right multi-family residential project could be developed on the R-5-B zoned portion of the Skyland Property, adjacent to the Ft. Baker Drive properties, which would have a much more significant impact on the Ft. Baker Drive properties than the proposed PUD project. The Commission also notes that in response to security issues raised by the property owners on Akron Place, a site plan was created which did not allow direct pedestrian or vehicular access from Akron Place into this project. But instead allowed for the establishment of a significant landscaped buffer area between the project and those properties.

91. The Commission also concludes that the proposed Tree Preservation Area located near the adjacent Ft. Baker Drive and Akron Place properties responds to Policy FNS-1.2.4 of Chapter 17 of the Comprehensive Plan which seeks to reduce soil erosion and stabilize slopes at Far Northeast and Southeast erosion “hot spots”), particularly the Skyland/Alabama Avenue area.

92. The requested rezoning to C-3-A Zone Districts is part of a PUD application, which allows the Zoning Commission to review the design, site planning, and provision of public spaces and amenities against the requested zoning relief. In Zoning Commission Order No. 921, a PUD and Zoning Map amendment case, the Zoning Commission clearly articulated the legal standard for reviewing PUD-related Zoning Map amendments:

A PUD Map amendment is thus a temporary change to existing zoning, that does not begin until a PUD Covenant is recorded, ceases if the PUD is not built and ends once the PUD use terminates. This being the case, the Commission may grant PUD related map amendments in circumstances where it might reject permanent rezoning.

Z.C. Order No. 921 at 15 (COL 5). The Commission added:

A map amendment granted as part of a PUD establishes no precedent for zoning cases involving permanent zoning map amendments. A PUD map amendment is tied to the PUD use. The PUD use is constrained by covenant. Therefore, the merits of such amendments are usually analyzed in the narrow context of the PUD use requested.

Id. at 17-(COL 13). Finally, the Commission observed:

A PUD applicant seeking a related map amendment must still demonstrate that public health, safety, and general welfare goals of the zoning regulations would be served by the amendment.

Id. at 16 (COL 6).

93. In this case, the Commission finds that the proposed PUD and related map amendment of the Property to the C-3-A Zone District is appropriate given the superior features of the Project, the significant landscaped buffer that has been created in the area adjacent to the FBDP properties, the design and architectural treatment of the buildings in Block 1 and Block 4, and the Property's inclusion in an area deemed to be a Multi-Neighborhood Center in the Comprehensive Plan's Generalized Policy Map. The Commission's conclusion is consistent with OP's recommendations to approve the project and the PUD-related Zoning Map amendment.

94. The Commission finds that the Applicant's January 11, 2010 and March 29, 2010 submissions adequately addressed the issues raised by OP, FEMSD, DDOT, DDOE and UFA in their written submissions and in testimony at the public hearing. The Commission agrees with the Applicant's position that the amount of parking proposed in the Project is appropriate and that the Applicant's proposed assessment matrix is appropriate for determining parking amounts in later phases of development. The Commission finds that the proposed street and intersection enhancements adequately address DDOT's concerns about pedestrian safety. In addition, the Commission finds that the proposed number and location of curb cuts

are appropriate for the project. The Commission concludes that the Applicant's vegetation study and wetlands assessment adequately addresses the concerns noted by DDOE and UFA. The proposed plan for the Tree Preservation Area and plan for the replanting of trees will serve as a significant soil erosion control measure.

95. The Commission finds that the Applicant's March 29, 2010 and May 5, 2010 post-hearing submissions adequately address the issues raised by the Commission at the February 17, 2010 public hearing. The Commission concludes that the Applicant has adequately addressed all issues regarding the impact that construction of the project may have on the adjacent FBDP properties. The Commission finds that the construction mitigation measures and techniques and soil erosion control measures proposed by the Applicant will mitigate any adverse impacts on the FBDP properties.

96. The Commission has accorded ANC 7B the "great weight" to which it is entitled. In so doing, the Commission fully credited the unique vantage point that ANC 7B holds with respect to the impact of the proposed PUD on the ANC's constituents. The Commission recognizes that the Applicant met with the community on numerous occasions to address residents' concerns with the application. The Commission also finds that the Applicant worked with the ANC to resolve differences as to what each group felt were appropriate items to include in the public benefits and project amenities package. The Applicant's March 29, 2010 proposed public benefits and project amenities package is entirely appropriate for the development incentives and flexibility that it is requesting. The Commission finds that many of the benefits requested by the ANC are not appropriate and that the Applicant has met all of the ANC's requests that are reasonable and appropriate for this PUD project. Therefore, the Commission is not persuaded that it should include all of the ANC's proposed conditions in

this Order. The Commission finds that the Applicant has proffered a series of conditions which: mitigate traffic impacts; provide significant distance between the buildings located on Blocks 1 and 4 and the FBDP properties, as well as substantial landscaping and visual buffering of these buildings; include a number of construction mitigation measures that will be undertaken while construction activity occurs on the Property; and will provide significant amenities and benefits to the surrounding community.

97. The Commission acknowledges the testimony provided by neighboring property owners and by the FBDP. The Commission notes the three major issues that the FBDP raised in opposition to this application: (i) that the project is inconsistent with the Comprehensive Plan; (ii) the Applicant failed to prove the sufficiency of the project's benefits and amenities; and (iii) the Applicant's Traffic Impact Study was flawed. The Commission finds that the Applicant's responses to these concerns have been thoughtful and thorough. The Commission finds that the movement of the building on Block 1 away from the property line, the internalization of the ramp to the parking area in the building on Block 1, and additional greenery adequately address the concerns of the FBDP about visual impacts of Blocks 1 and 4 on their properties. The Commission finds that the distance between the project and the FBDP properties is adequate to minimize the visual impacts of the project. In addition, the Commission relies on the shadow studies provided by the Applicant which show that the PUD project will not adversely impact the amount of light and air afforded to the FBDP properties. The Commission finds that the scale of the project is considerably smaller than what would be allowed as a matter of right in the existing R-5-B zoning. In addition, the Commission finds that the proposed town center mixed use project, as proposed by the Applicant, is compatible with the surrounding neighborhood and is not inconsistent with the Comprehensive Plan. The

Commission concludes that the Applicant's plans for the Tree Preservation Area, additional trees and plantings, and green screens on various buildings will adequately preserve the FBDP's views. Finally, the Commission finds that the Applicant's traffic study provides a sufficiently accurate assessment of the traffic impacts of the project and that the project will not have a significant adverse impact on traffic in the surrounding area.

CONCLUSIONS OF LAW

98. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces-and other amenities" (11 DCMR § 2400.1). The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience" (11 DCMR § 2400.2).

99. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD (11 DCMR § 2402.5). The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, and yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment (11 DCMR § 2405).

100. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of

building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development

101. The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

102. The application meets the contiguity requirements of § 2401.3.

103. The proposed height and density of the buildings in the Project will not cause a significant adverse effect on any nearby properties and does, in fact, comport with District goals for development of this important Multi-Neighborhood Center. Any impact of the project on the surrounding area and adjacent properties is deemed to be not unacceptable. As demonstrated in the Traffic Study submitted by the Applicant and supported by DDOT, the project will not cause adverse traffic impacts.

104. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the Project will be properly mitigated. The Commission finds that the conditions of approval proposed by the Applicant are sufficient given the potential impacts of the project on the surrounding and adjacent properties and the development incentives and flexibility requested in this application.

105. The benefits and amenities provided by the Project are truly significant, thus granting the development incentives proposed in this application is appropriate.

106. The application seeks a PUD-related zoning map amendment to the C-3-A Zone District. The application also seeks limited flexibility from the Zoning Regulations regarding rear yard, side yard and lot occupancy requirements for some of the proposed theoretical lots; roof structure relief; relief from the closed court width requirements for the buildings on Blocks

2A and 2B; and relief for the proposed shared loading facilities for the buildings on Blocks 3 and 4.

107. Approval of the PUD and change in zoning is not inconsistent with the Comprehensive Plan. The Commission finds that rezoning the site is consistent with the Comprehensive Plan, specifically the designation of the majority of the Property as a Multi-Neighborhood Center on the Generalized Policy Map.

108. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The Project is consistent with the major themes and city-wide elements of the Comprehensive Plan, including the Land Use, Housing and Transportation Elements. The PUD is also consistent with the more specific goals and policies of the Far Northeast and Southeast Area.

109. The Commission is required under D.C. Code § 1-309.10(d)(3)(A)(2001) to give “great weight” to the issues and concerns of the affected ANCs. As is reflected in the Findings of Fact, ANC 7B voted to support the application subject to various conditions. The Commission finds that the conditions of approval proposed by the Applicant adequately address the relevant and appropriate conditions proposed by the ANC.

110. The Commission is also required to give great weight to the recommendations of OP (See D.C. Code § 6-623.04 (2001)). The Commission gives OP’s recommendation to approve the PUD great weight and concurs with its conclusions, except with regard to the proposed number of parking spaces. The Commission notes that the overall parking ratio for the project is appropriate for this Property. The Commission approves the number of parking spaces proposed for the project and the Applicant’s proposal regarding the number of parking spaces to

be provided in later stages of development, as identified in the Applicant's parking space assessment matrix.

111. The Commission notes that the concerns of each public agency, including, but not limited to OP, DDOT, DDOE, UFA and FEMSD have been addressed satisfactorily by the Applicant.

112. The Commission acknowledges those individuals and the FBDP who testified in opposition to the Application. The Zoning Commission finds that the density, height, and scale of the development are appropriate. The Commission notes that the Applicant made changes to the design and location of the building on Block 1 over the course of the public hearing process to address the concerns of the FBDP. The Commission finds that the proposed town-center, mixed-use development is entirely consistent with the majority of the Property's designation as a Multi-Neighborhood Center. The Commission finds that the soil erosion control and construction mitigation measures proposed by the Applicant adequately address the concerns raised by the FBDP regarding possible construction impacts on their homes. The Commission also finds that the Applicant's Traffic Impact Study was conducted and prepared in an appropriate manner. The Commission agrees with the conclusions of the Applicant's Traffic Engineering expert that this project will not create adverse traffic impacts. The Commission finds that the design of this project is consistent with good urban planning principles and will not have a detrimental effect on neighboring properties.

113. The PUD project and the rezoning of the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

114. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations and the conditions of this Order, the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. Here, the Commission finds that the proposed PUD-related map amendment of the Property to the C-3-A Zone District is appropriate given the superior features of the PUD project and is subject to the limitations stated herein.

115. The applications for a PUD, related Zoning Map amendment and amendment to an approved Campus Plan are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of this application for Consolidated Review of a Planned Unit Development and related Zoning Map amendment for the Subject Property (Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190, & 214/196; Square 5632, Lots 1, 3-5, & 802; Square 5633, Lots 800 & 801; Square 5641, Lots 10-13 & 819; Square 5641-N, Lots 12-31 & 33). The approval of this PUD is subject to the following conditions:

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit _____ of the record, as modified by the guidelines, conditions, and standards of this Order.
2. The Applicant shall make the following financial, or in-kind service, contributions:

(a) Financial Support to Schools: The Applicant shall make in-kind service contributions, with a value of \$200,000, to support local schools for aesthetic improvements and to participate in initiatives such as "Buff and Scrub." The Applicant expects that these in-kind service contributions will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Office of Zoning's Compliance Review Manager ("OZCRM") as to whether any in-kind service contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund.

(b) Sponsorship of local community events and programs: The Applicant shall establish and administer a \$35,000 fund to sponsor community events such as holiday food drives, community festivals, and other community-promoting activities for the area surrounding the project. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to OZCRM as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund.

(c) Contractor loan fund: The Applicant shall establish and administer a \$300,000 fund that will ensure timely payment for small Certified Business Enterprise and local contractors who cannot otherwise wait for typical draw cycles to be paid. If funds are left at the end of construction, the remaining funds will be added to the retailer build-out subsidy fund. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to OZCRM as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund.

(d) Local retailer build-out subsidy: The Applicant shall establish and administer a \$500,000 fund to subsidize a portion of the build-out costs for Certified Business Enterprise and local retailers opening a store at the Skyland Town Center. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the

Applicant will provide evidence to OZCRM as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund.

(e) Anacostia and Francis Gregory Libraries: The Applicant shall provide up to \$50,000 to perform capital improvements, upgrade computers, and provide other services for the Anacostia and Francis Gregory Libraries. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to OZCRM as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund.

(f) Pocket Park at 25th & Naylor Road: The Applicant shall improve and maintain, with a value of \$50,000, the existing triangular pocket park at 25th Street and Naylor Road. The Applicant expects that these improvements will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the OZCRM as to whether any improvements were made for this purpose, the recipient of those improvements, and the outstanding balance of this fund.

(g) The Applicant shall provide job training programs, at a cost of \$75,000, for nearby community residents so that they are prepared to apply and interview for jobs with the retailers at the Skyland Town Center or elsewhere. The Applicant shall maintain a list of trained and qualified job candidates and shall provide that list to all new retailers. The Applicant expects that this program will be conducted over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to OZCRM as to the job training programs that were conducted in the prior year, if any.

(h) The Applicant shall provide home buying and homeownership classes, at a cost of \$75,000, to prepare community members and future residents for purchasing a home, repairing credit, and maintaining a home. The Applicant expects that these classes will be conducted over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to OZCRM as to whether as to the home buyer training programs that were conducted in the prior year, if any.

3. Once all of the financial and in-kind service contributions and programs identified in Condition Nos. 2-4 are completed, there is no further obligation on the part of the

Applicant. The Commission will require those organizations receiving a monetary contribution to present evidence to the OZCRM demonstrating that the money has been applied to the designated use within six months of receiving the contribution. If the money has not been applied to the designated use within six months, then the recipient must provide a reasonable explanation to the OZCRM as to why not and must present evidence to the OZCRM within one year indicating that the contribution has been properly allocated.

4. With the consent of DDOT, the Applicant shall construct and provide space for a 800 — 1,000 square foot commuter store adjacent to, or located in, the building on Block 2. The commuter store will offer transit riders Smartcards and Metrobus/Metrorail fare cards, maps, real-time schedules, and transportation options in the Metro Washington area. The commuter store will be operated by DDOT. The Applicant will deliver the commuter store space to DDOT as a warm white shell, with a finish floor, ceiling, lights, etc. The Applicant will not be responsible for the purchase or installation of any equipment of specialty items needed for the operation of the commuter store. The Applicant shall provide the same security and maintenance for the commuter store as it will for the other retail tenants in the project. In the event that DDOT determines that it will not be responsible for the operation of the commuter store, the Applicant will not be required to provide or construct such space.
5. The Applicant shall make the transportation infrastructure and traffic improvements to the area around Skyland Town Center, as provided for in the approved plans and materials: modified traffic signals; reconfiguring existing traffic lanes; restriping; new signs; and the widening of 25th Street. These transportation infrastructure and traffic improvements will be completed prior to the issuance of a Certificate of Occupancy for the Building on Block 1, contingent on the consent of DDOT to the scope of the required improvements.
6. The Applicant shall make the following public space improvements to Naylor Road and Alabama Avenue, as provided for in the approved plans and materials: new DC standard sidewalks, granite curbs, and gutters; paver crosswalks; street trees; irrigation; special pavers; benches; receptacles; bollards; and 16' Washington Globe lighting. The Applicant will provide a landscape buffer on the east side of the Property to screen the project from Hillcrest residents. The Applicant will also provide two green roofs. These public space improvements must be made by the completion of the last phase of development of the project.
7. The project shall be designed to obtain a certified level in the LEED-for-Homes, or other equivalent standard, for mixed-use retail and residential projects (including, but not limited to Green Communities). The large format retail store in Block 1 shall be designed to achieve a LEED Silver rating in the LEED NC 2.2 or LEED-CS 2.0 rating system, or other equivalent standard.
8. The Applicant shall establish a transportation management program ("TMP") that includes the following:

- (a) A transportation services coordinator, through the property management office, who will develop and administer the TMP strategies.
 - (b) Rerouting of Metrobuses, placement of bus stops at more convenient locations, and enhancement of passenger access and safety to encourage the use of public transit. This shall be done in collaboration with DDOT and WMATA.
 - (c) Request employers at Skyland Town Center to provide employees with Metrochecks or SmarTrip cards.
 - (d) Provide designated parking locations along the internal street system for shared vehicles (i.e., ZipCar). The number of cars and locations will be determined by the Applicant and the shared vehicle company.
 - (e) Provide landscaped and lit shared pedestrian and bicycle paths between key locations within the project and Metrobus stops.
 - (f) Provide traffic calming features, such as special pavers and sidewalk bump-outs, on internal streets.
 - (g) Provide bicycle parking in the amount of at least five percent of the required automobile off-street parking (the amount required by DDOT).
 - (h) Establish and maintain a ridesharing and ride-matching program for residents and employees of Skyland Town Center.
 - (i) Monitor and regularly evaluate the TMP.
9. Enter into a First Source Employment Agreement with the D.C. Department of Employment Services in substantial conformance with the Agreement included as Exhibit F of the Applicant's Pre-Hearing Statement submitted into the record. A fully signed First Source Employment Agreement between the Applicant and DOES must be filed with the Office of Zoning prior to the issuance of the first above grade building permit for the project.
 10. Enter into a Certified Business Enterprise Utilization Agreement with the D.C. Department of Small and Local Business Development ("DSLBD") in substantial conformance with the Agreement included as Exhibit G of the Applicant's Pre-Hearing Statement submitted into the record. A fully signed Certified Business Enterprise Utilization Agreement between the Applicant and DSLBD must be filed with the Office of Zoning prior to the issuance of the first above grade building permit for the project.
 11. Reserve a total of 20% of the residential units as affordable for households having an income not exceeding 80% of the Area Median Income ("AMI") for the Washington, DC Metropolitan Statistical Area (adjusted for family size). Reserve an additional 10% of the residential units as affordable for households having an income not exceeding 120% of AMI. A proportionate amount of affordable housing will be distributed throughout Blocks 2-4 except for the two upper stories of each building and the townhouses.

development of the approved PUD project must be filed within ten (10) years of the issuance of the final certificate of occupancy for the first building.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

On May 24, 2010, upon the motion of _____, as seconded by _____, the Zoning Commission **APPROVED** the application for the PUD and related map amendment by a vote of _____.

On June 28, 2010, upon the motion of _____, as seconded by _____, the Zoning Commission **ADOPTED** this Order to approve the PUD, related Zoning Map amendment by a vote of _____.

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on _____.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING